

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WHITNEY SPICHER,

Plaintiff,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, S.I. and
JOHN and JANE DOES 1-10,

Defendants.

CASE NO. C22-1116 MJP

ORDER ON RENEWED MOTION
TO COMPEL

This matter comes before the Court on Plaintiff's Renewed Motion to Compel. (Dkt. No. 29.) Having reviewed the Motion, Defendant American Family Mutual Insurance Company, S.I.'s Response (Dkt. No. 31), the Reply (Dkt. No. 34), and all supporting materials, the Court GRANTS the Motion in part.

BACKGROUND

As narrowed in the Reply, Plaintiff seeks an order compelling Defendant to respond to Interrogatories 3, 4, 17-2, concerning Defendant's evaluation of Plaintiff's injuries. Plaintiff also

1 seeks documents concerning the reserves Defendant set in this action, which are responsive to
2 Request for Production No. 3. Defendant opposes the demand to further supplement its
3 interrogatory responses because it does not have complete medical records from medical
4 vendors. And Defendant argues that it need not produce any documents created after Plaintiff
5 served her notice under the Insurance Fair Conduct Act because this threatened suit against
6 Defendant as UIM insurer and any such information is protected by the work product doctrine.

7 ANALYSIS

8 **A. Meet and Confer**

9 Defendant argues that Plaintiff failed to meet and confer in advance of filing the
10 Renewed Motion. The Court disagrees. Plaintiff has conferred with Defendant about the
11 interrogatory responses and the request for production at issue in this case. It is true that Plaintiff
12 filed this Renewed Motion on the same day that Defendant supplemented its interrogatory
13 responses. But Plaintiff had already discussed the responses and the Renewed Motion showcases
14 the Parties' ongoing dispute over the adequacy of the responses. While Defendant may be
15 technically correct that Plaintiff could have met and conferred further, it does not find that this
16 rule should stand in the way of resolving the Parties' dispute that they are unable to resolve
17 without the Court's assistance.

18 **B. Interrogatories**

19 The Court finds that Defendants must supplement their answers as to Interrogatories 3-4,
20 17-21. The responses are not complete. Given that discovery has now closed there is no basis to
21 support Defendant's contention that it is still gathering additional information necessary to
22 supplement the interrogatories. Defendant must provide final, supplemented responses to these
23 interrogatories. And the Court warns Defendant that it cannot rely on any materials that have not
24

1 been produced in discovery to support its defenses. Defendant must file supplemental responses
2 within 7 days of entry of this Order.

3 **C. Request for Production**

4 The Court additionally finds that Defendant must provide a privilege log for any
5 documents concerning Defendant's reserves that it has withheld.

6 "The attorney-client privilege applies to communications and advice between an attorney
7 and client and extends to documents which contain a privileged communication." Pappas v.
8 Holloway, 114 Wn.2d 198, 203 (1990). After receiving of an IFCA notice from an insured
9 pursuing a UIM claim that warns of litigation, the insurer may invoke the attorney client and
10 work product privilege. See Schreib v. Am Fam. Mut. Ins Co., 304 F.R.D. 282, 206 (W.D. Wash.
11 2014). That is because the insurer in this instance may reasonably believe that it is preparing for
12 litigation against the insured and therefore steps into the shoes of the tortfeasor. Richardson v.
13 Gov't Emps. Ins. Co., 200 Wn. App. 705, 714 (2017). Although Defendant may invoke the
14 attorney client privilege and work product doctrine, it may not withhold otherwise responsive
15 documents without providing a privilege log. See Cedell v. Farmers Ins. Co. of Washington, 176
16 Wn. 2d 686, 696 (2013).

17 The Court finds that once Defendant received the IFCA notice on June 14, 2022, it may
18 invoke the attorney client privilege and work product doctrine. But in order to properly withhold
19 documents responsive to Request No. 3, it must also provide a privilege log that details what
20 records are being withheld and sufficient information to allow Plaintiff to test the assertion. The
21 Court ORDERS Defendant to prepare and transmit a privilege log of all documents responsive to
22 Request for Production No. 3 that it is withholding. The log must be produced within 14 days of
23 entry of this Order.

CONCLUSION

The Court GRANTS in part Plaintiff's Motion. The Court finds that Defendant must supplement its response to Interrogatories Nos. 3-4, 17-21. It must do so within 7 days of entry of this Order. And the Court finds that Defendant must provide a privilege log for all documents withheld that are responsive to Request for Production No. 3 within 14 days of entry of this Order.

The clerk is ordered to provide copies of this order to all counsel.

Dated July 17, 2023.



Marsha J. Pechman
United States Senior District Judge